

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

Hearing Date/Agenda Number
P.C. 12/11/02 Item 3.d

File Number
CP02-063

Application Type
Conditional Use Permit

Council District
9

Planning Area
Willow Glen

Assessor's Parcel Number(s)
419-05-028

STAFF REPORT

PROJECT DESCRIPTION

Completed by: Teresa Estrada

Location: Northwest corner of Ross Avenue and Hillsdale Avenue (1811 Hillsdale Avenue)

Gross Acreage: 10.14 Net Acreage: 10.14 Net Density: n/a

Existing Zoning: CG-Commercial Existing Use: Retail Store (Target Store)

Proposed Zoning: CG-Commercial Proposed Use: Retail with off-site sale of alcohol

GENERAL PLAN

Completed by: TE

Land Use/Transportation Diagram Designation
Neighborhood Community Commercial

Project Conformance:
☒ Yes ☐ No
☐ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: TE

North: Elementary School (Steindorf Elementary) R-1-8 Residence

East: Commercial & Single Family Detached Residential CP-Commercial Pedestrian, R-1-8(PD), & R-1-8 Residential

South: Commercial CP-Commercial Pedestrian & CN-Commercial Neighborhood

West: Commercial & Single Family Attached Residential CG-Commercial General & RM-Residential

ENVIRONMENTAL STATUS

Completed by: TE

☐ Environmental Impact Report found complete
☐ Negative Declaration circulated on
☐ Negative Declaration adopted on

☒ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: TE

Annexation Title: Cherryhurst No. 3-b

Date: 11/8/56

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☐ Approval
☒ Approval with Conditions
☐ Denial
☐ Uphold Director's Decision

Date: _____

Approved by: _____
☒ Action
☐ Recommendation

APPLICANT/DEVELOPER

OWNER

Jack N. Reif
Target Corporation
1000 Nicollet Mall TPN-0910
Minneapolis, MN 55403

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: TE

Department of Public Works

None Received

Other Departments and Agencies

See attached memorandum from Police Department, Vice Unit dated November 25, 2002.

GENERAL CORRESPONDENCE

None received

ANALYSIS AND RECOMMENDATIONS**BACKGROUND**

The applicant, Target Corporation, is requesting a Conditional Use Permit to allow off-site sale of alcoholic beverages in an existing shopping center located on the north west corner of Ross Avenue and Hillsdale Avenue (1811 Hillsdale Avenue). The Zoning Ordinance requires a Conditional Use Permit for off-sale of alcoholic beverages in the CG-Commercial General Zoning District. A Liquor License Exception Permit is not required since the California State Department of Alcoholic Beverage Control has determined that a proposed establishment involving the sale of alcoholic beverages is not located in a census tract in which the ratio of existing liquor licenses to the tract's population is higher than average for the County.

The proposed use is located in an existing Target retail store. It is bounded by single-family detached residential uses to the east and single family attached residential uses to the west. Another existing retail shopping center adjoins retail store on the west side. Across Hillsdale Avenue to the south, are existing commercial establishments. Steindorf Elementary is located to the north, adjacent to the rear of the existing retail establishment. Other businesses in the area that sell alcoholic beverages include two restaurants and a discount retail store to the south across Hillsdale Avenue. Smart & Final is proposed to locate within an existing tenant space of the shopping center to the east and recently received approval for the off-sale of alcohol (City File No. PDA71-040-03).

Project Description

The applicant currently occupies an existing big-box retail building with no additional building square footage to be constructed under this proposal. Under this proposal, and upon approval of the subsequent ABC Permit from the State, Target would be able to sell beer & wine. The facility will operate during normally allowed business hours.

ENVIRONMENTAL REVIEW

The Director of Planning has determined that this project is exempt from further environmental review under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act.

GENERAL PLAN CONFORMANCE

The proposed use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of General Commercial.

ANALYSIS

The key issue analyzed for the proposed project is conformance to the Zoning Ordinance sections related to the off-sale of alcoholic beverages.

Off-Sale of Alcoholic Beverages

The project proposes the sale of pre-packaged alcohol for off-site consumption. The Zoning Ordinance requires a Conditional Use Permit for off-sale alcohol in the CG-Commercial General Zoning District. The Planning Commission may grant the Conditional Use Permit if it makes the following findings:

1. For such a use at a location closer than 500 feet from any other such use that the proposed location of the off-sale alcohol use would not contribute to an excess concentration of establishments which sell alcoholic beverages,
2. For such a use at a location closer than 500 feet from any child care center, elementary school, secondary school, college or university, or one hundred fifty (150) feet from any residentially zoned property that the building in which the proposed use is to be located is situated and oriented in such a manner that would not adversely affect such residential and/or school use.

The project site is located within Census Tract 5029.02. The Police Department determined that the subject site is not located in one of the City's 24 census tracts identified as problematic areas by City Council Resolution No. 67681. Further, the attached memorandum from the Police Department Special Investigation/Vice unit has confirmed that the shopping center is not located in an area with over a 20% crime index as defined by AB 2897 or located within any Project Crackdown, Weed and Seed or Strong Neighborhood Initiative (SNI) Area. The Police Department believes that granting the Conditional Use Permit would not contribute to an excess concentration of establishments which sell alcoholic beverages, neither pose a detriment to the immediate neighborhood nor generate additional law enforcement problems.

Although the project site is located directly adjacent to Steindorf Elementary, the entrance of the store is situated in the opposite direction from the school toward Hillsdale Avenue, and is located approximately 1,000 feet from the nearest building of Steindorf Elementary. The entrance of the project site is also situated approximately 350 feet from the nearest residential property line of the single family detached residences to the east across Ross Avenue. Additionally, the residential uses to the west are buffered by a 6 foot tall masonry wall separating the project site from these single family attached residences.

Conclusion

The off-sale of alcohol should not prove detrimental to the neighborhood, based on the staff's analysis. The proposed project would provide a convenient outlet for groceries and other necessities along with the incidental sale of alcoholic beverages. The building in which the proposed use is to be located is situated and oriented in such a manner that it would not adversely affect the nearby residential and school uses.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of General Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the CG-Commercial General Zoning District.
3. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.
4. The subject site is generally surrounded by commercial land uses to the east, south and west, single family detached residential uses to the east and single family attached residential uses to the west.
5. The project proposes the sale of alcoholic beverages for off-site consumption.
6. The Zoning Ordinance requires a Conditional Use Permit for off-sale alcohol in the CG-Commercial General Zoning District.

7. A Conditional Use Permit may be issued for the off-sale of alcoholic beverages if the Planning Commission makes the findings required by San Jose Municipal Code Sections 20.08.900 and 20.100.720.
8. The project consists of the off-sale of alcohol in an existing 150,553 square foot retail building.
9. The project site is less than 150 feet from residential uses. The project entrance is situated approximately 350 feet from the nearest residential use.
10. There are no other off-sale alcohol uses within 500 feet of the subject site.
11. The proposed use is located within 500 feet of a public or private school. The project entrance is approximately 1000 feet from the nearest building of the public school and situated away from the school use.
12. The subject site is not located in an existing Project Crackdown/Weed and Seed Area, Project Crackdown Area, or Strong Neighborhoods Initiative (SNI) Area or similar areas that qualify for these programs on the City's Neighborhood Revitalization Strategy Criteria.
13. The City's Police Department has determined that the off-sale alcohol use would not pose a detriment to the immediate neighborhood or continue current law enforcement problems.
14. The subject is not located in one of the 24 census tracts identified by the City Council as problematic areas for such uses.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The off-sale of alcoholic beverages will not adversely affect the surrounding residential neighborhood in that the building is located in an existing shopping center facing away from residential uses.
5. Although the subject site is within 500 feet of another off-sale alcohol use, the project is consistent with the Zoning Ordinance criteria for approval of off-sale alcoholic beverages in that it would not contribute to an excess concentration of establishments that sell alcohol.
6. The proposed project is consistent with Neighborhood/Community Commercial designation on the San Jose 2020 General Plan Land Use/Transportation Diagram.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth are hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit and Liquor License Exception Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of

Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
2. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
3. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
4. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, CP02-068, shall be printed on all construction plans submitted to the Building Division.
 - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
 - c. *Americans With Disabilities Act.* The applicant shall provide appropriate access as required by the Americans With Disabilities Act (ADA).
5. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
6. **Off-Sale of Alcoholic Beverages.** This permit allows the sale of alcoholic beverages for off-

site consumption.

7. **Alcoholic Beverage Control.** The off-sale of alcoholic beverages is allowed in conformance with the requirements of the Department of Alcohol Beverage Control (ABC). The applicant shall obtain all necessary permits maintain full compliance and in good standing with the Department of Alcoholic Beverage Control.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit/Liquor License Exception Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit/Liquor License Exception Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit/Liquor License Exception Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit/Liquor License Exception Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit/Liquor License Exception Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

c: Engineering Services